

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Sherry Kelley,)	C/A No. 0:13-2176-JFA-PJG
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Carolyn W. Colvin, Commissioner of)	
Social Security,)	
)	
Defendant.)	
)	

The plaintiff, Sherry Kelley, brings this action pursuant to 42 U.S.C. § 405(g) to obtain judicial review of the final decision of the Commissioner of Social Security (Commissioner) denying her claim for disability insurance benefits (DIB).

The Magistrate Judge assigned to this action¹ has prepared a thorough Report and Recommendation wherein she opines that the Commissioner's decision should be reversed and remanded for further administrative action. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The parties were advised of their right to submit objections to the Report and Recommendation which was filed on October 2, 2014. The Commissioner has responded indicating that it will not file objections to the Report and Recommendation, and noting that

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

it does not concede that the Commissioner's decision was not substantially justified.


It is the duty of the ALJ reviewing the case, and not the responsibility of the courts, to make findings of fact and resolve conflicts in the evidence. This court's scope of review is limited to the determination of whether the findings of the Commissioner are supported by substantial evidence taking the record as a whole, *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996), and whether the correct law was applied, *Walls v. Barnhart*, 296 F.3d 287, 290 (4th Cir. 2002).

After a careful review of the record, including the findings of the ALJ, the briefs from the plaintiff and the Commissioner, and the Magistrate Judge's Report, this court finds that the Report is proper and it is adopted and incorporated herein by reference.

Accordingly, the Commissioner's decision is reversed and remanded for further review as set out in the Magistrate Judge's Report and Recommendation and this order.

IT IS SO ORDERED.

October 21, 2014
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge